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The Honorable Dan Morales  
Texas Attorney General  
Opinion Committee  
P.O. Box 12548  
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FEB 18 92

Opinion Committee

CMRRR NO. P 251 990 982

Dear Committee Members:

The Fort Bend County Tax Assessor/Collector, Marsha P. Gaines, has asked the County Attorney's office to request an Attorney General's opinion. Her query is whether she is precluded from collecting rollback taxes on Cinco Ltd. for tax years 1981, 1982 and 1983 by §23.55(e) of the Texas Property Tax Code as amended.

The Tax Assessor/Collector recounts the events as follows:

1. In February of 1984, rollback taxes were calculated for Cinco LTD and mailed by a Fort Bend County Tax Research Clerk. During that time period rollback taxes were calculated at the request of the property owner, their agent or a title company.
2. In late 1984 or early 1985 Cinco Ltd. paid rollback taxes to Waller County Central Appraisal District in the amount of \$634,407.61 for 1981, 1982, 1983, and 1984.
3. In 1989, a representative from Cinco Ltd. met with Ms. Gaines to discuss Cinco's rollback taxes. The validity of the rollback taxes was questioned at that time. The representative from Cinco acknowledged receiving the rollback taxes calculated by the tax office in 1984. \$313,981.83 in rollback taxes were due by Cinco at that time.

4. On September 1, 1989, Property Tax Code §23.55 was amended authorizing the Central Appraisal District to determine the change in land use and to notify the landowner of same. Because of that amendment Ms. Gaines has been unable to collect the same rollback taxes paid to the Waller CAD. The Fort Bend Central Appraisal District used August 8, 1990 for the date of the use change allowing the tax office to only collect rollback taxes for 1984.

In a June 21, 1990 letter Jim Robinson, Executive Director of the State Property Tax Board, replied to the Cinco rollback tax issue as follows:

Based on the clear language of the amendment and the law regarding amendments to procedural statutes, our opinion is that the chief appraiser, not the tax assessor-collector, makes all change of use determinations after September 1, 1989, regardless of when the change of use took place. The Tax Assessor-Collector has no authority over change of use determinations.  
(Emphasis Added).

The Fort Bend County Tax Assessor/Collector believes that because Cinco Ltd. was given notice of the change in land use and acknowledged same prior to the 1989 amendment, she has the authority to collect the rollback taxes.

Ms. Gaines states, further, that until she receives an Attorney General's opinion on the ability of the tax office to collect these outstanding rollback taxes, all tax certificates will be issued with a notation reflecting waiting on Attorney General's opinion.

Very truly yours,

  
Ben W. Childers, County Attorney